



To the Honorable Council
City of Norfolk, Virginia

July 12, 2016

From: David S. Freeman, AICP
Director, Department of General Services

Subject: Acceptance of Bid for a Long-Term Parking Agreement for 400 parking spaces in the City of Norfolk in the Fountain Park Garage located at 130 Bank Street

Reviewed: Sabrina Joy-Hogg
Sabrina Joy-Hogg, Deputy City Manager

Ward/Superward: 2/6

Approved: Marcus D. Jones
Marcus D. Jones, City Manager

Item Number:

IB-1

- I. **Recommendation:** Accept highest bid from a responsible bidder and adopt ordinance
- II. **Applicant:** City of Norfolk
- III. **Description:**
This agenda item is an Ordinance accepting a bid for a Long-Term Parking Agreement for four hundred (400) parking spaces in Fountain Park Garage located at 130 Bank Street. This parking garage has sufficient available capacity to accommodate the 400 parking spaces required by this agreement.
- IV. **Analysis**
As stated above, sufficient capacity is available in the parking garage noted above to accommodate the potential demand of 400 total spaces. The term of the parking agreement would be twenty (20) years, with the option to extend the term for up to two (2) additional periods of five (5) years each. Because the term is in excess of five (5) years, the proposed lease must be bid in accordance with the requirements of sections 15.2-2100, 15.2-2101 and 15.2-2102 of the *Code of Virginia*.
- V. **Financial Impact**
Revenues from this Agreement will support debt service and operations of the Parking System.
- VI. **Environmental**
N/A

VII. Community Outreach/Notification

In accordance with the *Norfolk City Charter* and the *Code of Virginia*, legal notice was posted in The Virginian-Pilot. In addition, public notification for the agenda item was conducted through the city's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Department of General Services, the Department of Development and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Exhibit A - Terms and Conditions of Proposed Long-Term Parking Agreement
- Invitation to Bid

Form and Correctness Approved

By

Office of the City Attorney

Contents Approved:

By

DEPT. General Services

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE ACCEPTING THE BID SUBMITTED BY _____ FOR A LONG TERM GARAGE PARKING AGREEMENT WITH A TERM OF APPROXIMATELY TWENTY (20) YEARS, WITH THE OPTION TO EXTEND THE TERM FOR UP TO TWO (2) ADDITIONAL PERIODS OF FIVE (5) YEARS EACH, FOR THE LEASE OF 400 PARKING SPACES IN THE FOUNTAIN PARK GARAGE LOCATED AT 130 BANK STREET IN THE CITY OF NORFOLK.

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WHEREAS, pursuant to the provisions of Section 15.2-2100, et seq., of the Code of Virginia, 1950, as amended, the City of Norfolk has invited bids for a lease of 400 parking spaces in the Fountain Park Garage located at 130 Bank Street for a term of approximately twenty (20) years, with the option to extend the term for up to two (2) additional periods of five (5) years each, subject to certain terms and conditions; and

WHEREAS, the requirements of Sections 15.2-2101 and 15.2-2102 of the Code of Virginia, 1950, as amended, have been met and the Council has carefully considered all bids submitted; now, therefore,

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That _____, being the highest responsible bidder, its bid for a parking agreement with a term of approximately twenty (20) years, with the option to extend the term for up to two

(2) additional periods of five (5) years each, in accordance with the terms and conditions set forth in Exhibit A attached hereto, for 400 spaces in the Fountain Park Garage located at 130 Bank Street in the City of Norfolk, is hereby accepted.

Section 2:- That the City Manager is authorized to correct, amend, or revise the attached Garage Parking Agreement as he may deem necessary in order to carry out the intent of the Council and to execute the Garage Parking Agreement, as corrected, amended, or revised in accordance herewith, for and on behalf of the City, subject however to approval as to form and correctness by the Office of the City Attorney.

Section 3:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

TERMS AND CONDITIONS OF PROPOSED LONG TERM GARAGE PARKING
AGREEMENT

1. PROVISION OF PARKING.

During the Term of this Agreement, the City shall provide Tenant parking in the Garage subject to the following conditions:

(a) Parking capacity in the Garage of four hundred (400) parking spaces (the "Maximum Allocated Amount") will be made available by the City to Tenant to provide long term parking for the residents of the Project pursuant to this Agreement. Except as otherwise set forth herein, the parking spaces leased by Tenant pursuant to this Agreement shall be unreserved and will be "24/7" spaces, available twenty four (24) hours per day, seven days per week. Until such time as the Project is complete and a final certificate of occupancy is issued, Tenant shall have the right to utilize the spaces leased hereunder for its contractors, and employees working at the Project or the contractors or employees involved with the redevelopment of the building known as Two Commercial Place, provided that the spaces shall be "daytime" spaces available from 6:00 a.m. until 9:00 p.m.

(b) If the City reasonably determines that parking in the Garage is not sufficient to provide reliable parking to the Project's tenants pursuant to this Agreement because of its existing obligations to provide parking to the tenant of Two Commercial Place, the City shall have the right to relocate not more than _____ parking spaces of the Maximum Allocated Amount from Fountain Park Garage to other parking facilities owned by the City, which facilities will be located as conveniently to the Project as reasonably possible. In such event, the Maximum Allocated Amount shall be decreased by the number of such relocated spaces, and a maximum allocated amount equal to the decrease in the Maximum Allocated Amount for Fountain Park Garage shall be designated for the new location and shall be subject to the terms and conditions of this Agreement. The City shall provide at least thirty (30) days' prior written notice of such relocation to Tenant.

(c) Any of the parking capacity in the Garage that has not been designated for allocation to Tenant may be made available by City to the general public (including Tenant's guests) for transient parking on a non-exclusive, unreserved, first-come, first-served, open occupancy basis. Tenant specifically understands that maximum utilization of all parking spaces is extremely important to City, and Tenant covenants to do all things reasonably necessary to permit City to obtain such maximum utilization. On any given day, City shall have no obligation to make available to Tenant any parking in excess of the Maximum Allocated Amount.

(d) Subject to paragraph (e) below, the City shall charge Tenant and Tenant shall pay to the City _____ (\$____) per month ("Parking fee"), commencing as of _____, for each of the parking spaces leased until such time as a certificate of occupancy is issued for residential use of all or any portion of the Project and thereafter the City shall charge the then current standard rate for the downtown residents parking in the Garage for the number of spaces that are issued to residents of the Project. Except as otherwise set forth in Section 1(a) above, Tenant shall

not permit any of the parking spaces leased hereunder to be used for any purpose other than parking for residents of the Project without the express consent of the City. In the event such consent is given, Tenant shall obtain the necessary Parking Permit and shall pay the applicable parking rate for any such parking space. Guests of Tenant or Tenant's tenants shall obtain Guest Parking Permits through the City's Parking Division at the standard, residential parking rate set by the City Council. Payment shall be made by Tenant in advance on or before the first day of each calendar month during the Term, as hereinafter defined, to the City of Norfolk, Division of Parking, 232 East Main Street, Norfolk, Virginia 23510 or to such other address as directed by the City.

(e) The term of this Agreement and the City's obligation to provide parking hereunder shall commence on _____ and shall continue for a period of approximately twenty (20) years until _____ (the "Term"). Tenant shall have the right to extend the Term by two (2) successive periods of five (5) years each by giving the City written notice of the exercise of such right not less than ninety (90) days prior to the commencement of the extension term for which the notice is given. Each such extension term, if exercised by Tenant, shall be on all of the terms and conditions as one applicable to the initial twenty (20) year term. A memorandum of this Agreement may be recorded in the land records of the City of Norfolk, Virginia, and the City agrees to execute and deliver to Tenant any such memorandum that accurately reflects the terms of this Agreement. Tenant may terminate this Agreement at any time by giving City not less than thirty (30) days prior written notice. Tenant may, at any time, lower the number of leased spaces with thirty (30) days' written notice to City and to Tenant's lender, if any. Such notice shall include a written statement by Tenant's lender, if any, that the Lender agrees to the reduction in the number of leased spaces to Tenant. The number of spaces leased by Tenant after any such reduction shall constitute the new Maximum Allocated Amount, which number shall not thereafter be increased without the written approval of the City Manager.

(f) Tenant understands, acknowledges and agrees that the Parking Fee may be increased from time to time by written notice from the City to Tenant in amounts proportionate to rate increases for the Garage enacted by the City Council of the City of Norfolk; however, the City agrees that such rates shall not exceed the applicable standard rates charged to other tenants in the Garage.

(g) Tenant may not charge residents of the Project or other permitted users of the parking spaces leased hereunder any parking related fees in excess of those established by the City for the Garage.

(h) Tenant agrees to cooperate in all reasonable respects with the City and use such systems as the City may reasonably adopt from time to time, after consulting with Tenant, in order to track actual use of parking spaces and the number of vehicles parked in the Garage, so long as such systems are generally consistent with those used in other comparable City owned garages to track similar uses of parking. Tenant agrees to, and agrees to cause its agents, employees and contractors to, use good faith in the use and administration of any such tracking systems in order to insure that each vehicle parked in the Garage through the Project-validated guest self-parking is accounted for pursuant to the terms of this Agreement. Tenant acknowledges and agrees that attempts by Tenant, its agents, employees or contractors to circumvent such tracking systems and park additional vehicles without payment therefor may constitute grounds for termination of this Agreement.

(i) Tenant shall have the option to administer the parking spaces leased hereunder, in which event the City shall provide parking passes directly to Tenant for issuance, which passes shall be subject to a replacement fee in the event of loss or damage, which fee is currently \$5.00 per pass. Tenant shall issue passes for residential parking only to bona fide residents of the Project. Tenant shall provide a monthly accounting to the City of the parking spaces being utilized. The City shall have the right to audit the books and records of Tenant with respect to the parking spaces leased hereunder and to make copies of such records. Tenant shall keep a record of each person authorized to park in the Garage and the make and model of their vehicle.

2. OPERATION AND USE.

(a) The City or its designated operator shall continue to operate the Garage with all services and facilities normally associated with comparable public parking areas in the City of Norfolk.

(b) The City shall allow unimpeded and open access to permitted users of the Garage to and from the Garage at all times, i.e., twenty-four (24) hours per day, seven (7) days per week, including holidays.

(c) In addition to the parking spaces leased to Tenant, other parking spaces may be available on a non-exclusive, unreserved, self-parking, first-come, first-served, open-occupancy basis subject to such short-term and daily rates as the City establishes.

(d) Upon giving reasonable notice to Tenant, the City or its designated operator may restrict access to the Garage for the performance of necessary repairs or maintenance and such repairs or maintenance shall be completed as quickly as reasonably possible. If requested by Tenant, the City will provide replacement parking during such maintenance and repairs at other parking facilities owned by the City, and such facilities will be located as conveniently to the Project as reasonably possible.

(e) Use of the Garage by Tenant, its tenants, agents, employees, contractors and guests shall be subject to such reasonable rules and regulations as the City may adopt from time to time. The City shall reasonably and equitably enforce such rules and regulations.

3. MAINTENANCE AND REPAIR.

(a) The City shall continue to maintain the Garage, or contract for the maintenance thereof, at all times in good order and condition, clean and free of rodents, in accordance with maintenance standards employed at comparable public parking areas in the City of Norfolk, so that the Garage shall comply with all building codes, ordinances, regulations, and laws of any governmental authority having jurisdiction thereof. The City shall be responsible for maintenance and repair of the Garage and shall pay all charges for water, sewer, gas, electricity and other utilities. The term "maintenance" shall include, but not be limited to, painting, operation, inspection, testing, repair, replacement of mechanical, electrical or similar components and/or cleaning the Garage, including any of its elevators and appurtenant facilities.

(b) In the event of any damage or destruction of all or any portion of the Garage, the City shall undertake promptly to repair or rebuild the Garage to provide as promptly as reasonably possible after the date of such damage or destruction, the Maximum Allocated Amount

of parking. During the period of any such repair or rebuilding, the City shall provide replacement parking as provided by paragraph 2(d).

(c) The City shall provide and maintain interior and exterior illumination sufficient to illuminate the Garage and all means of pedestrian and vehicular access and egress thereto and therefrom, between twilight and one hour after dawn.

(d) The City shall provide suitable and sufficient signs in and around the Garage as required for safe and orderly flow of pedestrian and vehicular traffic, including signage directing garage users to appropriate entrances and on any general directories provided by the City in the Garage.

(e) The City shall have the right to make and complete, using high quality workmanship and materials, such replacements, repairs, alterations and improvements to the Garage as it deems necessary or desirable in connection with the aforementioned usage consistent with applicable zoning laws. During the period of such replacements, repairs, alterations and improvements, the City shall provide replacement parking as provided by paragraph 2(d).

(f) In performing maintenance, the City shall use reasonable efforts to interfere as little as possible with the use, occupation and enjoyment of the Garage by Tenant. If possible, maintenance shall be confined to the area actually being so maintained.

4. TAX LIABILITY.

The provisions of this Agreement shall not be deemed to require Tenant to pay, by whatever name called, income or receipts or excess profits taxes assessed against the City, or any capital levy, rent, gift or transfer taxes incurred by the City, pertaining to the ownership or operation of the Garage.

5. TITLE TO PROPERTY

The City covenants that it has full right to enter into this Agreement as of the date hereof and the City is or will be seized in fee simple of and have good and marketable title to the Property and any improvements thereon, subject to any recorded liens, leases, encumbrances, easements, covenants, conditions and restrictions and existing zoning and other state and local requirements, none of which shall prevent the City from performing its obligations hereunder.

6. INTEREST; ATTORNEYS' FEES.

If Tenant fails to pay the City any amounts payable under this Agreement when due, following receipt by Tenant of notice thereof from the City, such past-due payments shall bear interest from the date due until paid at the rate of six percent (6%) per annum. In addition, Tenant shall pay all reasonable out-of-pocket costs and expenses of collection (including court costs and reasonable attorneys' fees) incurred by the City in collecting sums due under this Agreement.

7. INSURANCE; LIABILITY.

The City shall not be liable to Tenant or Tenant's tenants, employees, agents or contractors for any injury, damage, compensation or claim directly or indirectly relating to or arising out of any use of the Garage by Tenant tenants, employees, agents or contractors unless such

injury, damage, compensation or claim results from the City's gross negligence or willful misconduct.

8. ASSIGNMENT AND LEASING.

(a) Tenant may not assign this Agreement, in whole or in part, or, except as set forth in Section 1(a) above, lease all or any part of the parking spaces leased hereunder to anyone other than residents of the Project or other permitted users, except to (i) a purchaser of One Commercial Place, (ii) an Affiliate of Tenant, (iii) any lender as collateral for financing or (iv) any purchaser at a foreclosure sale, transferee pursuant to a deed in lieu of foreclosure, or any receiver appointed for the property. For purposes hereof, "Affiliate" shall mean as to any person, any other person that, directly or indirectly, controls, is controlled by or is under common control with such person. For purposes of this definition, the term "control" (including the terms "controlling", "controlled by" and "under common control with") of a person means the possession, directly or indirectly, of the power to vote more than 50% of the voting stock or membership interests of such person or to direct or cause the direction of the management and policies of such person, whether through the ownership of voting stock or membership interests, or by contract or otherwise. The City agrees to enter into any agreement reasonably requested by any lender or prospective lender to confirm that the assignment of this Agreement to the lender is permitted and to agree to give such lender notice of Tenant's default and a reasonable opportunity to cure such default. The foregoing notwithstanding, Tenant's administration of the parking spaces leased pursuant to the provisions of Section 1(h) shall not constitute an assignment for purposes of this Section 8.

9. NOTICES.

All notices or other communications required or desired to be given with respect to this Agreement shall be in writing and shall be addressed as follows:

To the City:

City Manager
City of Norfolk
1100 City Hall Building
810 Union Street
Norfolk, VA 23510

with copies to:

Director of General Services
232 East Main Street, Suite 250
Norfolk, Virginia 23510

Director of City Planning
500 City Hall
810 Union Street
Norfolk, Virginia 23510

City Attorney
Office of the City Attorney
900 City Hall Bldg.
810 Union Street
Norfolk, VA 23510

To Tenant:

with a copy to:

Any communication so addressed shall be deemed duly served when received or when mailed by certified mail, postage prepaid, return receipt requested.

10. TERMINATION.

In the event Tenant violates any provision of this Agreement or defaults in any of its obligations hereunder, the City may terminate this Agreement if Tenant fails to cure such violation or default within thirty (30) days after Tenant's receipt of written notice of the violation or default. The City agrees to give a simultaneous duplicate notice of default to any of Tenant's lenders for which Tenant has provided the City a notice address. Tenant shall have the right to terminate this Agreement at any time by giving the City thirty (30) days written notice prior to the effective date of the termination.

11. EASEMENT.

This Lease is subject to the rights, if any, of the grantee under that certain Easement Agreement dated as of June 4, 1997 by and between NationsBank, N.A. and Three Commercial Place Associates recorded in the Clerk's office of the Circuit Court of the City of Norfolk in Deed Book 2909 at page 0211.

12. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior understandings and writings, and this Agreement may be amended or modified only by a writing signed by the City and Tenant.

13. COMPLIANCE WITH FEDERAL IMMIGRATION LAW.

At all times during which any term of this Agreement is in effect, Tenant shall not knowingly employ any unauthorized alien. For purposes of this section, an "unauthorized alien" shall mean any alien who is neither lawfully admitted for permanent residence in the United States nor authorized to be employed by either Title 8, section 1324a of the United States Code or the U.S. Attorney General.

14. AUTHORIZATION TO TRANSACT BUSINESS IN THE COMMONWEALTH.

Tenant hereby represents that it is organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership and is authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

15. MISCELLANEOUS.

(a) The obligations of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns who shall be only those persons to whom this Agreement is permitted to be assigned in accordance with the terms and conditions of such agreement. Any such successors and assigns shall be deemed to have assumed and agreed to perform all obligations under this Agreement arising from and after such assignment.

(b) In the event that any provisions of this Agreement shall be held invalid, the same shall not affect in any respect whatsoever the validity of the remaining provisions of this Agreement.

(c) This Agreement and the rights of the parties hereunder shall be interpreted in accordance with the laws of the Commonwealth of Virginia. Venue shall be in the Circuit Court of the City of Norfolk, Virginia.

(d) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.